

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Seng Xiong,

Defendant.

Case No. 16-cr-167 (SRN/HB)

ORDER

SUSAN RICHARD NELSON, United States District Judge

This matter comes before the Court on the Government's Motion in Limine [Doc. No. 71] requesting that the Court prohibit the Defendant from raising any undisclosed public authority defense at trial. The Government advises the Court that despite entry of an order by Magistrate Judge Hildy Bowbeer on September 27, 2016 requiring the Defendant to disclose any intention to raise a public authority defense, the Defendant has not yet done so. (*See* Order Granting Mot. for Discovery [Doc. No. 44].) Without clear indication to the contrary from the Defendant, the Government anticipates he may attempt to raise such a defense at trial. (*See* Mot. in Limine at 2.)

Pursuant to Rule 12.3(a) of the Federal Rules of Criminal Procedure, "[i]f a defendant intends to assert a defense of actual or believed exercise of public authority on behalf of a law enforcement agency or federal intelligence agency at the time of the alleged offense, the defendant must so notify an attorney for the government in writing . . . within the time provided for filing a pretrial motion, or at any later time the court sets." In the

present matter, the deadline for filing pretrial motions expired on January 6, 2017, and the Court has not provided an alternate deadline for filing a notice of public authority defense. (*See* Dec. 28, 2016 Order [Doc. No. 69] at 2.) Nonetheless, the Government now requests that the Court effectively extend the deadline until the pretrial conference on January 11, 2017. (*See* Mot. in Limine at 3.)

The Defendant has not opposed the Government's motion, and the Court finds it to be proper in light of the clear requirements of Rule 12.3. Accordingly, Defendant is hereby instructed that if he intends to present any affirmative testimony or evidence at trial claiming that he acted pursuant to public authority, actual or believed, he must provide the Court and the Government with a detailed list of expected witnesses and evidence relevant to the defense no later than 9:00 AM CST, Wednesday, January 11, 2017. *See* Fed. R. Crim. P. 12.3(a) & (b). Should the Defendant fail to comply with this order, the Court will prohibit the testimony of any undisclosed witness regarding the public authority defense. *See id.* at 12.3(c).

IT IS SO ORDERED.

Dated: January 9, 2017

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge